

Volume 11

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

SONOS, INC.,)	
)	
Plaintiff and)	
Counter-Defendant,)	
)	
VS.)	NO. C 20-6754 WHA
)	Related Case No. C 21-07559 WHA
GOOGLE, LLC,)	
)	
Defendant and)	
Counter-Claimant.)	
_____)	

San Francisco, California
Wednesday, May 24, 2023

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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Wednesday, May 24, 2023

P R O C E E D I N G S

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(The following proceedings were held outside of the presence of the Jury)

THE COURTROOM DEPUTY: Calling Civil Action 20-6754, Sonos Inc. versus Google, LLC, and related cases. Counsel, please approach the podium and state your appearances for the record, beginning with counsel for plaintiff.

MR. RICHTER: Good morning, Your Honor. Good to be with you. Cole Richter on behalf of Sonos. With me today is my partner, Rory Shea. Also with me is Alyssa Caridis and Elizabeth Moulton, all on behalf of Sonos.

THE COURT: Thank you. Welcome to you.

MR. PAK: Good morning, Your Honor. Sean Pak on behalf of Google. With me is Melissa Bailly, Lindsay Cooper and Iman Lordgooei. Thank Your Honor.

THE COURT: Thank you. Each of you made a Rule 50 motion. The jury is not here today, but is in deliberations, and will resume its deliberations on Friday. But I thought since you each filed a brief and an opposition, we will get a start, at least, and maybe -- maybe this will be our only hearing on Rule 50.

So I want to give each of you a chance to make -- and maybe even more, if time permits -- make one major point that

1 you want to make sure is impressed on me. Then I'll give the
2 other side a chance to respond to your major point. And then
3 we will flip it around, and the other side gets to make a major
4 point.

5 So we'll see. That will probably take about an hour, just
6 that much.

7 Okay. Who wants to go first? Since the defendant usually
8 gets to go first on Rule 50, Google, you get to go first.

9 **MR. PAK:** Thank you, Your Honor.

10 **THE COURT:** But you only get to make one point.
11 Because a lot of it's in the briefs. I don't want to -- I want
12 you to make a point that you feel like I might otherwise --
13 where oral argument is an additional benefit.

14 Go ahead.

15 **MR. PAK:** Thank Your Honor.

16 So if we could have the slides up.

17 (Document displayed)

18 **MR. PAK:** Turning to slide 3, Your Honor -- and I'll
19 be happy to hand these up after the conclusion.

20 Your Honor, the first point I want to make is that the
21 claims in this case -- all the claims -- do not require any
22 type of user action in terms of creation, configuration, saving
23 and recollection of any of the zone scenes.

24 And I wanted to present to you some of the testimony that
25 we heard from Dr. Almeroth, the Sonos expert, on this issue.

1 Quoting from Transcript 1659, Line 21 to 1660, Line 5. As part
2 of his examination with Sonos's counsel, as you can see, he was
3 trying to distinguish the Party Mode option as not being a zone
4 scene. And he repeatedly refers to "user action" throughout
5 his testimony. Not customizable by the user, the user cannot
6 add or customize.

7 If we turn to the next slide, Transcript 1661, Line 12 to
8 20.

9 (Document displayed)

10 **MR. PAK:** Did not provide a user with any ability to
11 customize, and so on.

12 So we've heard this throughout the case. And I think it
13 is very clear, Your Honor, that this is not a basis to
14 distinguish the Party Mode that existed. And, to just make
15 clear what the evidence showed at trial, Party Mode was
16 persistent. It was always saved in the system in the form of
17 both the executable code that resides in the flash memory of
18 the devices, the zone players of the Sonos 2005 system.

19 After you initiate the startup of all the zone players in
20 the house, they will communicate with each other. They will
21 collect what's called "group topology" which is all of the
22 members that are present in the room. That membership
23 information is saved.

24 And we had testimony from Mr. Millington --

25 **THE COURT:** You's are referring to the Sonos prior art

1 system.

2 **MR. PAK:** That's right, Your Honor. So the Sonos 2005
3 system, which had the built-in Party Mode. The Party Mode
4 would be saved at that time when all of the group topology
5 information was collected, and stored -- I think we heard
6 something called xml file format, where that information
7 resides in temporary memory. That is present before a user
8 takes any action. So you have the creation and the saving of
9 that information by the system, automatically.

10 Then at some point the user can go to the user interface
11 of the controller. And they will always see the Party Mode as
12 an option that's built in. When the user pushes Party Mode, it
13 invokes that Party Mode group. We heard testimony from both
14 Mr. Millington as well as Dr. Schonfeld that at that point,
15 there's a further recreation of that Party -- all -- all zones
16 Party Mode feature. In that all the members of that speaker
17 group will then receive the AVTransport URI message, except for
18 the group coordinator, which is one of the zone players in the
19 system. That causes all the other ones to communicate with
20 that group coordinator zone player. At.

21 Some point, all that information is saved. And then,
22 there is a further storage that occurs.

23 **THE COURT:** Wait, wait. All of it is saved to
24 identify the -- what? The Party Mode participants?

25 **MR. PAK:** That's right, Your Honor. So what happens

1 is then at that point, all of that information is further
2 stored in terms of the operation of the devices, where the
3 group coordinator now knows through the set AVTransport
4 messages being communicated and the internal messages that are
5 happening between the zone players. There will be a storage of
6 that information in a persistent manner.

7 We heard evidence in this case that the Party Mode
8 information as well as the group topology information is saved,
9 is stored.

10 **THE COURT:** Where was it stored?

11 **MR. PAK:** It's stored in the zone players, Your Honor.
12 So in the group coordinator device, it's stored in a persistent
13 manner.

14 And one of the reasons why we heard for that is you could
15 have multiple controllers in the same house. So using one
16 controller, you can set up the Party Mode. Another controller
17 can enter the house. It doesn't have any *a priori* knowledge of
18 what the group topology is, or what the different party mode
19 settings are. It will then be able to grab that information
20 and be able to know which zone players are in the system and
21 which Party Mode members exist.

22 That's all in evidence. So there's further causation of
23 storage of that information, in a persistent manner.

24 Persistence, Your Honor, both experts agree that this is
25 with respect to the '966 element of causing storage. That it

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1 has to be persistent, in that between the time you create and
2 save the zone scene, there is a period of time before you
3 invoke it.

4 But the critical point is, the claims say nothing about
5 how long you have to wait. There's no time restriction. And
6 in fact, we saw in the patent, itself, that it specifically
7 teaches that any saved zone scene can be invoked at any time.

8 And we have some very important testimony that came in,
9 Your Honor. And I want to turn to --

10 **THE COURT:** Before you -- I want to hear what you're
11 about to say. But, at a higher level, where is this headed?

12 So let's say that we decide Party Mode is a zone scene.
13 But that's only one. Where's the -- you need an overlapping
14 zone scene.

15 **MR. PAK:** That's right, Your Honor.

16 **THE COURT:** Where are you headed, as to what the other
17 one is?

18 **MR. PAK:** So the other one -- if you remember in the
19 Sonos 2005 prior art system, you also have what are called
20 "dynamic groups." So those dynamic groups can be created on
21 top of Party Mode. The dynamic group can be given names so the
22 user could go in and create whatever name they wanted to give
23 it.

24 Those dynamic groups necessarily overlapped with the Party
25 Mode because Party Mode included everything. These dynamic

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1 groups could be set to only include a subset. But no matter
2 how you set up the dynamic groups, there was always overlap
3 with the Party Mode, which included every zone player in the
4 house.

5 Where we're heading, Your Honor, is this. The only thing
6 the Sonos 2005 system could not do was save those dynamic
7 groups for later use. And so this is where we get all of the
8 obviousness opinions that we heard about. Much of it was --

9 **THE COURT:** Wait. You said something about 30 seconds
10 ago that I don't remember in the testimony. You said that a
11 dynamic group could be named and -- could be named. I don't
12 remember that. I thought -- I thought it would be that you
13 could -- you could add dining room to the garage, or -- but you
14 -- it didn't -- I don't remember there being a way to name
15 that. And really, naming implies that it is saved. But there
16 was -- but I thought the testimony was it was not saved.

17 **MR. PAK:** So the names I'm referring to, Your Honor,
18 are the speaker names. So one of the things that the system
19 allows you to do with dynamic groups is, if I add a zone player
20 to the system, I can name that zone player "Dining Room,"
21 "Living Room," "Party Speaker 1," whatever name you wanted to
22 give it. The system would, when you create the dynamic group,
23 append each of those named speaker names, and create a
24 different name.

25 So we think that qualifies as a common theme, regardless

1 of the fact that it was the individual zone players that were
2 named. But when you concatenate, you basically have a theme
3 that would be a common theme, or into the group.

4 But the --

5 **THE COURT:** But that wouldn't show up on the little
6 handheld -- what's it called?

7 **MR. PAK:** Controller.

8 **THE COURT:** Controller. The name wouldn't show up on
9 the controller, would it?

10 **MR. PAK:** It would. The additions, if I named it
11 "Living Room" and "Party Speaker," the controller would show
12 that the group that I'm forming would be the living room
13 speaker with the Party Mode -- or party speaker. So that would
14 be --

15 **THE COURT:** There would be a line item on the
16 controller that says "Living Room" plus --

17 **MR. PAK:** Correct.

18 **THE COURT:** Would that literally say "plus"?

19 **MR. PAK:** I believe that's right. We can go back and
20 look at the controller. But --

21 **THE COURT:** I don't remember that.

22 **MR. PAK:** Yeah.

23 **THE COURT:** But maybe that's true; I just don't
24 remember it. Okay, continue with where you are headed.

25 **MR. PAK:** Yes. So where we are headed is regardless

1 of whether the user names it or not, the issue is: What is the
2 additional evidence that we saw where, given the capability of
3 the Sonos 2005 system -- and we saw the -- Mr. Lambourne's
4 historical record showing that Party Mode was, in fact, a zone
5 scene. And he said that that was more reliable than any
6 testimony he can give today.

7 Where we are headed is all of the other evidence that came
8 in through trial, most of it unrebutted by Dr. Almeroth,
9 including the Sonos forum posts -- and if you can turn to, just
10 to give you an example, on slide 39.

11 (Document displayed)

12 **MR. PAK:** This is one of the posts that we saw,
13 Your Honor, that was talked about extensively with the various
14 witnesses. This is part of the thread called "Macros/presets."

15 And as Your Honor recalls, Mr. Lambourne was not an
16 engineer or programmer. His solution for his invention was a
17 macro. And that was confirmed during my cross-examination of
18 Mr. Lambourne.

19 **THE COURT:** That diagram on the left, is that
20 something you ginned up? Or --

21 **MR. PAK:** We created that to illustrate what's in the
22 document above. So the document above is TX3930. And it talks
23 about summer and winter party modes, as well as a morning mode.
24 And it specifically says that summer and winter modes will be
25 overlapping, in that the summer mode would include the deck

1 speakers, while the winter mode would not.

2 So we're illustrating that scenario on the image to the
3 left where, for example, winter, if the zone player on the
4 left-hand side, 106, was a deck speaker, it would be included
5 in the summer mode. But it would not be included in the winter
6 mode.

7 So you would have two party modes, according to this Sonos
8 prior art posting, where you have two distinct zone scenes that
9 would be saved that would have a thematic name, summer and
10 winter, and they would overlap.

11 And whenever Your Honor's ready I could turn to --

12 **THE COURT:** Up at the top it says "Macro/presets." Is
13 that something that was in the original? Or is that something
14 that you added to it?

15 **MR. PAK:** No. This is in the original document,
16 Your Honor.

17 **THE COURT:** "Macro/presets"?

18 **MR. PAK:** Yes, Your Honor. So this is part of -- the
19 entire thread starts with "Macro/presets." That's the topic.
20 And I'll show you some more forum posts that talk about macros
21 specifically. But that was in the original document, part of
22 the prior art posting by the Sonos users.

23 And if you turn to the next slide.

24 (Document displayed)

25 **MR. PAK:** I was asking Mr. Lambourne on

1 cross-examination about that very document, which is TX3930.

2 And I asked him (As read):

3 **"QUESTION:** What Jeff T, the user, was
4 describing in a publicly available Sonos
5 forum posting dated September 22, 2005, is
6 having multiple zone scenes that are saved
7 for later; correct?

8 **"ANSWER:** Yes.

9 **"QUESTION:** And those scenes (sic) could be
10 overlapping in that they would share a
11 speaker or a zone player, correct?

12 **"ANSWER:** Yes, and in the summer and winter
13 mode he is describing, yes."

14 So we have clear testimony from the man who knows his
15 invention best that what he was seeing in these Sonos prior
16 forum postings is multiple overlapping zone scenes that are
17 saved for a later invocation.

18 If you turn to the next slide.

19 (Document displayed)

20 **MR. PAK:** We brought many more posts. This is
21 "theboyg" forum posting that we've discussed with Your Honor
22 and presented to the jury. This one is entitled "Virtual Zones
23 and Zone Grouping."

24 In that, you see the virtual zone -- which is his name for
25 the concept of zone scenes -- called "Downstairs." And he

1 says:

2 "I can group all my downstairs zones into
3 this. Then I don't have to keep manually
4 linking/unlinking multiple zones everytime."

5 That is precisely the problem that Mr. Lambourne
6 identified for his inventions.

7 And if you go to the next slide.

8 (Document displayed) 42

9 **MR. PAK:** I asked Mr. Lambourne about this post.
10 And I asked him -- this is transcript 549, Line 24, to 550 at
11 10 (As read):

12 **"QUESTION:** And theuserboyG says, 'Why can't
13 I have a virtual zone, a zone called
14 downstairs and I can group all my downstairs
15 zones into this? Then I don't have to keep
16 manually linking/unlinking multiple zones
17 every time. Please.'

18 **"ANSWER:** Yes.

19 **"QUESTION:** So, again, this virtual zone
20 where you have a downstairs zone that is
21 saved for future use so you don't have to
22 manually link it and unlink it, that was
23 describing your idea for zone scenes;
24 correct?

25 **"ANSWER:** Yes. But, I mean, without much

1 detail. But, yes, that -- broadly speaking."

2 So he acknowledges again, Mr. Lambourne, that the concept
3 of having multiple zone scenes that save for later was
4 disclosed in the prior art.

5 And if you turn to the next slide.

6 (Document displayed)

7 **MR. PAK:** This is where the solution piece comes in.
8 It's not just that he was seeing the idea of zone scenes,
9 Mr. Lambourne, in these forum postings, he was also seeing the
10 same solution. This is critical to all the issues that the
11 other side has raised in their briefing.

12 This is transcript, at Page 528, Line 11, to 529, Line 7.
13 If you recall, Mr. Lambourne walked through his conception
14 story with the various notebook entries, and his conception
15 document, which is dated December 21, 2005.

16 I asked him, based on that testimony (As read):

17 **"QUESTION:** One of the solutions that you
18 were thinking of for your eventual zone scene
19 invention was the use of macros to implement
20 zone scenes?

21 **"ANSWER:** Yes."

22 And this is critical.

23 **"ANSWER:** I use the words somewhat
24 interchangeably. You know, my focus was on
25 creating user-facing functionality. So I

1 describe them loosely as zone groups, macros,
2 zone scenes and other things.

3 **"QUESTION:** They were interchangeable to you
4 from a UI designer's perspective; correct?

5 **"ANSWER:** Yes."

6 And if we turn to the next slide, transcript Page 531,
7 Line 15 through 22, I asked him:

8 **"QUESTION:** ...macros can be thought of as
9 programming instructions..."

10 Which are the limitation language of the claims.

11 **"ANSWER:** Big picture, yes.

12 **"QUESTION:** And big picture, you could, in
13 your mind, as a UI designer or user interface
14 designer, you could use macros to implement
15 zone screens; correct?

16 **"ANSWER:** From a user perspective is the way
17 I was describing macros in the notepad, yes.
18 That was one word I had for it."

19 And this is where the important examination questions come
20 in. Next slide.

21 (Document displayed)

22 **MR. PAK:** Transcript at Page 538, Line 4, to 539,
23 Line 4:

24 **"QUESTION:** So people were suggesting" --
25 these people are the forum posts -- "were

1 suggesting ideas how to use macros and
2 presets to improve upon the Sonos 2005 prior
3 art system from their perspective; correct?

4 **"ANSWER:** Yes.

5 **"QUESTION:** So if I was in summer, I could
6 set up my summer Party Mode and then I could
7 set up a winter Party Mode that could be
8 saved for later use; correct?

9 **"ANSWER:** Yes.

10 **"QUESTION:** Again, that's consistent with the
11 examples that you gave in your patents of
12 zone scenes; correct?

13 **"ANSWER:** There can be more than one setup,
14 yes."

15 And then if you turn to the next slide, at TX3930.

16 (Document displayed)

17 **MR. PAK:** This is another prior art posting
18 Your Honor, Ken Greenwood, dated September 22, 2005:

19 "I would find this functionality useful as
20 well..."

21 He was responding to the earlier post that we just saw
22 from boyG:

23 "I find myself manually linking and unlinking
24 setting volumes in a very repetitive way. I
25 would think that a macro type function would

1 be able to save those manual steps into a
2 single selection of a favorite."

3 And if we turn to the next slide.

4 (Document displayed)

5 **MR. PAK:** This is the key testimony that I obtained on
6 cross-examination that I presented to the jury in closing.

7 Transcript Page 541, Line 2 through 7:

8 **"QUESTION:** So Mr. Greenwood, in this prior
9 public posting about the Sonos 2005 system,
10 was describing the same type of problem that
11 you were trying to solve with zone scenes and
12 suggesting macros, which is a similar
13 solution to what you had in mind for that
14 functionality; correct?

15 **"ANSWER:** In broad terms, yes. As an
16 outcome, yes."

17 And if you turn to the next slide.

18 (Document displayed)

19 **MR. PAK:** TX3928. Here's another piece of prior art
20 forum posting that was presented during trial. September 22,
21 2005. This time from Mr. Majik, also known as Keith (As read):

22 "Perhaps we need a 'pre-set' (sic) page (perhaps
23 using the soft-keys on the Zone screen)" -- that
24 would be on the controller -- "to allow a pre-set to
25 be initiated. This pre-set could comprise a zone (or

1 zone group)..."

2 And it goes on to say:

3 "...or it could be a macro sequence."

4 "Macro sequence."

5 And why this is so important -- and if you turn to the
6 next slide, 548.

7 (Document displayed)

8 **MR. PAK:** And he confirms this, Mr. Lambourne

9 (As read):

10 **"QUESTION:** And in the third paragraph he

11 says 'Perhaps we read in a presets page.

12 Perhaps using the soft keys on the zone

13 screen to allow pre-set to be initiated.' Do

14 you see that?

15 **"ANSWER:** Yes.

16 **"QUESTION:** And we saw documents and your

17 testimony referring to zone scenes also as

18 presets; correct?

19 **"ANSWER:** Yes.

20 **"QUESTION:** So Keith, user name Majik, was

21 suggesting various ways that a pre-set for

22 zone scenes could be implemented; correct?

23 **"ANSWER:** Yes, on a broad level, yes."

24 And just one more piece of evidence that came in. And
25 most of this, Your Honor, in terms of substance was not

1 rebutted by Dr. Almeroth.

2 If you go to the next slide, TX3928, Page 2

3 (Document displayed)

4 **MR. PAK:** September 27, 2005, this time from a user
5 named flora's_dad (As read):

6 "Great idea. A macro-like scripter would
7 enable you to set groups of zones... You
8 could do these dynamic 'presets' based on the
9 Party Mode" -- that's the Party Mode that
10 existed in Sonos in 2005 -- "which the spouse
11 would love--like Entertaining, Romantic
12 Dinner, Ambiance..."

13 These are all thematic names, all talking about using
14 presets and macros, which were exactly the solution that
15 Mr. Lambourne had in mind.

16 And if you turn to the next slide.

17 (Document displayed)

18 **MR. PAK:** Transcript at Page 541, Line 22 (As read):

19 **"QUESTION:** But the zone scenes were being
20 described by users of the Sonos 2005 prior
21 art system before your December 20, 2005,
22 date, which is a conception date, and they
23 were talking about zone scenes, overlapping
24 zone scenes and using macros, which is one of
25 the solutions you had in mind, to implement

1 the zone scenes; correct?

2 **"ANSWER:** Yes. They were talking about
3 macros and scene groups, yes."

4 And so if you turn to the next slide.

5 (Document displayed)

6 **MR. PAK:** The Sonos forum posts unquestionably were
7 talking about the Sonos 2005 system. And we have clear
8 testimony from Mr. Lambourne saying not only did he see the
9 idea of overlapping zone scenes, but he saw his own solution in
10 there, which was to use macros.

11 And Your Honor asked multiple witnesses: Am I going to
12 see source code instructions in the patent? And the answer is:
13 Of course not. He didn't talk in code. He never wrote code.
14 He described the invention from a user interface perspective.

15 And all these conception documents show is that macros and
16 scripts, presets were the solution he had in mind, that
17 constitute the programming instructions. So this is
18 overwhelming evidence. Just combining Sonos 2005 system with
19 the Sonos forum posts which disclose multiple overlapping zone
20 scenes that could be saved for use later, and using macros and
21 scripts and presets to implement them.

22 But we have more than that, Your Honor. This is evidence
23 that was -- came in unrebutted, and this is why we think we
24 have a very, very strong case here, as a matter of law, based
25 on the evidence that was presented during trial.

1 If you turn to Page 53.

2 (Document displayed)

3 **MR. PAK:** This is the USPTO statement. If Your Honor
4 recalls, the '885 and '966 patent, where it went -- both of
5 them underwent prosecution, where there was discussion of the
6 Yamaha DME prior art.

7 In this -- this is TX004 at Page 4577 (As read):

8 "...Examiner takes official notice that the
9 grouping and subgrouping of a constellation
10 of audio players...was well known in the art
11 before the effective filing date of the
12 instant invention and would have been an
13 obvious inclusion."

14 Next slide.

15 (Document displayed)

16 **MR. PAK:** He goes on to say:

17 "The DME system" -- which was the prior art
18 under consideration -- "enables the practice
19 of the claimed subject matter without undue
20 experimentation and as such grouping of
21 playback device and channels thereon would
22 have been obvious" -- "obvious as a matter of
23 routine experimentation over the course of
24 normal operation by the average skilled
25 practitioner upon the DME interface to

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1 create, save and recall" -- "save and recall"

2 -- that's saving for later invocation --

3 "various configurations including..."

4 If you remember the Yamaha DME reference disclosed
5 already, up to 999 zone scenes.

6 **THE COURT:** I know you'll get to it, but -- that's
7 what the examiner said at one point. But the examiner
8 eventually changed his mind and allowed the claims or allowed
9 some amended claims.

10 **MR. PAK:** That's right, Your Honor.

11 **THE COURT:** What was that sequence?

12 **MR. PAK:** Mr. Lordgooei will address this as part of
13 any argument we have on the "while operating in standalone
14 mode."

15 But the reason why the claims were allowed is in the face
16 of the Yamaha rejection, they added the language about "while
17 operating in standalone mode." And making that amendment, the
18 examiner then made the finding that the Yamaha reference did
19 not disclose operating in standalone mode because when you
20 invoke a scene, you do not have continuous output of media.

21 **THE COURT:** Say that last part again.

22 **MR. PAK:** Yes. He said that Yamaha did not meet the
23 standalone mode set of limitations because Yamaha did not
24 continue to play media, continuous output of media, when you
25 are invoking the zone scene.

1 So this is -- if you go to DDX 14.41.

2 (Document displayed)

3 **MR. PAK:** DDX 14.41, Page 41.

4 (Document displayed)

5 **MR. PAK:** This is part of my closing that I presented
6 to the jury, as explained by Dr. Schonfeld.

7 TX006 at 4102 and 4087. The claim amendments were made,
8 it says (As read):

9 "...the DME manual does not teach at least:

10 'while operating in a standalone mode...'"

11 And you can see above that, that the claim was amended to
12 add the language about "while operating in a standalone mode."
13 This is the Yamaha DME manual.

14 If you go to the next slide.

15 (Document displayed)

16 **MR. PAK:** And the U.S. PTO examiner at TX006 at Page
17 5850 stated (As read):

18 "The following is an examiner's statement of
19 reasons for allowance: the prior art does
20 not reasonably teach the subject matter of
21 the independent claims. Particularly while
22 DME operates to accomplish playback of
23 selected media in synchrony on a selected set
24 of first, second, playback devices when a
25 scene is invoked..." -- And according to all

1 the claims, you invoke the scene while you
2 still operate in standalone mode -- "DME does
3 not allow for continuous output of media on a
4 particular playback device and joining the
5 continuous output by a selected payback
6 device..."

7 That is exactly the position that we have taken. And
8 Dr. Schonfeld explained that "while operating in standalone
9 mode" is playing media, actively playing media. Or in the
10 words of the examiner, "continuous output of media."

11 So that was the reason Your Honor, that these claims
12 survived the rejection. Was based on this idea that "operating
13 in standalone mode" is about continuous output of media.

14 Now, throughout this trial we've heard Sonos taking --

15 **THE COURT:** Help me on something. What does that
16 mean? You use the examiner's phraseology here, as to what was
17 the shortfall of the Yamaha system in the examiner's view.
18 But, give me an example.

19 **MR. PAK:** Sure, Your Honor. So for example, in
20 Yamaha, I had up to 999 zone scenes. But when I wanted to
21 invoke one zone scene from out of that set, it did not
22 continuously play music as an individual standalone device when
23 I was invoking the zone scene. And that --

24 **THE COURT:** What does that mean? So let's say you
25 have got six speakers. Six zone players. What are those zone

1 players doing, under the Yamaha machine in the moment before
2 you press a zone scene, that would say: Invoke the first four
3 out of the six.

4 **MR. PAK:** Let's imagine that we can just take one of
5 those speakers out of the six. One of the six speakers was
6 playing music individually. So it's playing music as a
7 standalone speaker. So it's operating in standalone mode.

8 When the user invoked the zone scene that had all six
9 speakers as a group, it would terminate playing that music
10 individually. And then it would switch over to the zone scene
11 that included all six speakers.

12 So what the examiner was saying here is as he understood
13 "while operating in standalone mode" to mean which is
14 continuous output of media, that limitation was not satisfied.

15 **THE COURT:** Well, why wouldn't it be? In the example
16 you gave, it was playing in standalone. And the exact instant
17 that they hit the button, it switches over to the other media.

18 **MR. PAK:** So according to the examiner, what he found
19 in the Yamaha manual was that there was some point where it
20 ceased to operate in standalone mode; then the zone scene was
21 invoked. And therefore, it didn't continue to output the media
22 individually on that speaker. The one speaker that we're
23 talking about.

24 **THE COURT:** For how long? A split-second?

25 **MR. PAK:** Could be -- it could be a split-second.

1 That's based on the manual. That's what the examiner found.

2 Now, the critical point is it supports -- this examination
3 record supports us in two ways. One, it supports us on our
4 view consistently that the new designs do not meet the
5 "operating in a standalone mode" because we terminate, as
6 Your Honor heard, not only the playback of music, but we tear
7 down the app. It is actually even configured to play music.
8 And we go into what Mr. Mackay talked about as idle mode.

9 Now, it also supports us from an obviousness standpoint
10 because there is no question that the Sonos forum posts had
11 everything, including saving for later.

12 And if Your Honor recalls, the only thing that they
13 pointed to in the patent and supporting "while operating in
14 standalone" was figure 6. And in figure 6 you went around in
15 circles waiting to see when a zone scene is invoked after you
16 created it.

17 Every forum post that I went through talks about creating
18 things like winter mode, summer mode, morning mode, that would
19 not be invoked at the time of creation. It is saved for later.
20 We presented all of that evidence. Multiple zone scenes could
21 be overlapping and saved for later.

22 But this piece of prosecution history shows that the
23 examiner -- and then if you turn to the next slide -- Sonos,
24 itself --

25 (Document displayed)

1 **MR. PAK:** Sorry. Going back to the deck that I was
2 using for the argument, going to slide 55.

3 (Document displayed)

4 **MR. PAK:** Not only did the examiner say it would have
5 been obvious to have configurations, storage and recalling of
6 zone scenes, Sonos admitted the same. And this is at TX4823.
7 This is Sonos speaking, in response to the examiner (As read):

8 "DME scenes" -- which are the zone scenes in

9 Yamaha -- "can be configured/stored and

10 recalled within the DME device group."

11 What they say is it does not suggest that recalling a DMC
12 (sic) can re-group individual devices into different DME device
13 groups. Which is, they said it doesn't allow you to create
14 overlapping zone scenes. But they admitted here that not only
15 was it obvious to save and recall zone scenes, that DME did
16 that.

17 And just to remind us on page -- the next slide --

18 (Document displayed)

19 **THE COURT:** I don't understand the point. Go back to
20 that one.

21 **MR. PAK:** Yes, sir.

22 (Document displayed)

23 **THE COURT:** What -- I -- what is it that Sonos was
24 telling the patent examiner was missing from Yamaha there? I
25 -- I don't quite get the point that Sonos was making back then.

1 So help me understand their point.

2 **MR. PAK:** Sure, Your Honor. It starts with the
3 "...but the DME manual does not suggest that a DME scene can
4 re-group individual devices..."

5 **THE COURT:** No, it says:

6 "...does not suggest that recalling a DME
7 Scene can re-group individual devices into
8 different DME device groups."

9 What does "re-group" mean? I've not heard that term
10 before.

11 **MR. PAK:** As I understand this statement, Your Honor,
12 it is that -- and Dr. Schonfeld explained this. The DME scene
13 was done with respect to a particular device group. So in
14 Yamaha, you didn't have the ability to re-group an individual
15 speaker into multiple zone scenes because they belong to one
16 device group that you were creating --

17 **THE COURT:** So in the Yamaha system, even though you
18 could save 999, you could not do overlapping?

19 **MR. PAK:** That's right.

20 **THE COURT:** That's kind of overkill, isn't it? To
21 have -- most people obviously have, say, max, ten. So how many
22 -- you can't have very many -- if you can't overlap, you're not
23 going to have very many -- you won't have any need for anything
24 close to 999.

25 **MR. PAK:** So the --

1 **THE COURT:** I don't get it. Why, why -- is that
2 right? That's the way Yamaha worked? If No. 6 speaker was in
3 Group A, then No. 6 is accounted for, you can't -- it won't be
4 in anything else? Is that the way Yamaha worked?

5 **MR. PAK:** Yamaha was a high-end system, Your Honor.
6 So if you turn to the next slide, you can see what the
7 interface looked like.

8 (Document displayed)

9 **MR. PAK:** So the idea was this was a high-end system
10 where you can control lots of different speaker groups in all
11 kinds of environments. So imagine if you're running a
12 conference room or a restaurant or a commercial building, you
13 have the ability to create multiple zone scenes. They were all
14 saved, stored, recall later. But it didn't allow for the
15 functionality of saving them in overlapping configurations.

16 But there's another important piece of history, which is
17 the next slide.

18 (Document displayed)

19 **MR. PAK:** This is the Bose reference that was also
20 discussed during prosecution. And it talks about -- this is a
21 USPTO at TX006 at 5850: Bose displays static groupings,
22 attached as rooms. The rooms may be individually activated
23 and/or grouped into a Party Mode where all rooms synchronously
24 deliver a common media.

25 So if you go to the next slide.

1 (Document displayed)

2 **MR. PAK:** What Bose taught was the idea of having
3 overlap. Because you could have a house button, which is the
4 equivalent to a Party Mode, where all the room speakers are
5 linked together and available for playback as a group. That is
6 the house button. You could also individually select two
7 rooms, like Room A and Room C, by pushing the room button to
8 group them together for playback.

9 So Bose prior art that was of record disclosed the
10 overlapping zone group.

11 **THE COURT:** What did the examiner say about Bose?

12 **MR. PAK:** I was showing you. This is the 5850, if you
13 go to the prior slide.

14 (Document displayed)

15 **MR. PAK:** So the examiner said (As read):

16 "Bose displays static groupings of media
17 players attached as 'rooms' and the rooms may
18 by individually activated and individually
19 configured for delivery of a synchronous
20 media and/or grouped into a Party Mode where
21 all rooms synchronously deliver a common
22 media."

23 So the prosecution history all points to one thing that
24 was missing in the Yamaha and the Bose reference. And it was
25 this idea of "while operating in a standalone mode." Are you

1 continuing to play music as a standalone device, when all the
2 various limitations of the claims are invoked or performed.

3 In this case, Sonos has taken the position that "while
4 operating in standalone mode" does not require continuous
5 output of media on the individual device. We disagree with
6 that, based on this prosecution history.

7 But certainly, under their view, there is no question that
8 the Sonos forum posts, all the other combinations taught that
9 element. And under our view that while operating in standalone
10 mode, we also have the disclosure in the Sonos forum posts
11 where if I do the winter mode and summer mode -- I'm not going
12 to invoke them now, because it's not summer or winter, then you
13 would continue to be able to operate the device in a
14 stand-alone mode, play music, and then switch to any of those
15 modes upon invocation while it's in standalone mode or while
16 it's operating in standalone mode.

17 **THE COURT:** All right. I've got to give the other
18 side a chance to respond.

19 **MR. PAK:** Sure. Great.

20 **THE COURT:** So let's hear from the other side.

21 **MR. SHEA:** Thank you, Your Honor. Rory Shea on behalf
22 of Sonos.

23 I'm going to try to address all of that, Your Honor. I
24 think there was more than one point in there. But, let me try
25 to do my best.

1 I want to start with the discussion of the prior art and
2 obviousness. So first and foremost, I mean, we're here, I
3 think, talking about the judgment of matter of law motions.
4 And when we talk about the scope and content of the prior art
5 and whether or not that meets the claimed invention as a whole,
6 that is a question of.

7 Fact. And there is testimony in the record, absolutely,
8 testimony from both Dr. Almeroth and Sonos's witnesses that
9 contradict what Mr. Pak just said. So --

10 **THE COURT:** Wait. What did -- contradict which part
11 of what he just said?

12 **MR. SHEA:** Yeah. Sorry. So, I think several parts of
13 it, Your Honor. So maybe I can take it one by one. First and
14 foremost --

15 (Reporter clarification)

16 **THE COURT:** But, Mr. Pak did quote the actual
17 testimony. And I don't believe he forged what I just saw on
18 the screen. So that -- here, you two, let me say in my own
19 words what I think he was saying.

20 We're supposed to compare the prior art, what was known in
21 the prior -- all of it, not just -- all of it against the
22 claimed invention. And, and then see how much of it was
23 already in the prior art. And then ask the question: Would it
24 have been obvious to somebody skilled in the art to make that
25 leap from or -- big leap from what was already there to the

1 claimed invention?

2 And what I think he's saying is that that little leap or
3 big leap was described in the forum posts. So that's the part
4 I think that would be of some use for you to try to help me
5 understand. How close did the prior art get, you know, the
6 Yamaha thing with the examiner? And then how close -- was that
7 gap closed by the forum posts?

8 **MR. SHEA:** Sure, Your Honor.

9 So as a starting point, yeah. I think it's important to
10 remember that the way that the combination was presented at
11 trial started with the Sonos 2005 system. Correct.

12 **THE COURT:** Yeah.

13 **MR. SHEA:** And it was premised on this notion that
14 Party Mode was a zone scene, was the first zone scene. And --

15 **THE COURT:** That's right.

16 **MR. SHEA:** And then the dynamic group was the starting
17 point for the second zone scene. Although, I think there's no
18 dispute that the second -- that the zone group doesn't qualify
19 as a zone scene.

20 There is -- so just as a starting point, Your Honor, the
21 fundamental premise being this Party Mode is a zone scene,
22 Dr. Almeroth explained -- I think what's getting lost here is
23 not is it just is it a zone scene (indicating quotation marks),
24 and there's a set of requirements that are in the construction
25 for that. But, the claim elements step through the process

1 that is required.

2 So in order for you to have a zone scene, you first have
3 to have a first portion of the process where you create the
4 zone scene. And each claim has limitations that get at that
5 issue. Then after you create it, there's some period of time
6 where it exists, it's pre-saved and in existence, and then
7 available for later invocation.

8 And Dr. Almeroth testified, he explained very clearly why
9 Party Mode option in the Sonos 2005 system did not meet the
10 requirements of a zone scene, the construction of a zone scene;
11 that's one thing. And for more reasons than just that it
12 wasn't user-created. There were other reasons. But more --
13 just as importantly, maybe I shall say, it didn't meet the --
14 the claim limitations that were -- walk you through how this
15 happens. You have to create it first. It has to exist in an
16 uninvoked state for some period of time, and then the user can
17 later invoke it. I mean, that really is what the invention of
18 zone scenes is.

19 And it was -- Mr. Lambourne and Sonos were innovating over
20 the exact things that were in the Sonos 2005 system. I mean,
21 that's what their goal was. So there's clear testimony in the
22 record from Dr. Almeroth as well as other witnesses that Party
23 Mode didn't meet all those requirements of the claim. And
24 Dr. Almeroth laid that out.

25 So once you -- once you come to that conclusion, that

1 Party Mode isn't a zone scene and doesn't meet the requirements
2 of the claim in terms of the creation existing in an uninvoked
3 state and then eventually being invoked, then, Your Honor,
4 everything else that Dr. Schonfeld presented in terms of his
5 invalidity combination fall -- it's all premised on that. So
6 that's Point 1.

7 Now, they have presented all these other secondary
8 references. And Dr. Schonfeld said that they were presenting
9 those for one purpose, and one purpose, only, which was that
10 you couldn't save a second group. So all of that art -- and
11 his demonstratives show this, his testimony shows this -- all
12 of that art was presented to just fill in one part of the
13 claim. And that's all he reached opinions on with respect to
14 that art, is filling in this notion that you could have a
15 second zone scene that would allow you -- which really just
16 meant you could save (indicating quotation marks) the second
17 group.

18 But that -- that, again, is all premised on this notion
19 that Sonos -- Sonos's system, its 2005 system, had everything
20 else in the claim. Had the messages. Had the particular
21 sequence of functions that were required in order to create --

22 **THE COURT:** When you say "messages," what do you mean?

23 **MR. SHEA:** Yeah, sorry, Your Honor. So in claim -- in
24 the '885 claim, Limitations 1.6 and 1.7 both require that the
25 player receives an indication that it has been added to the

1 player from the network device. And then thereafter, later in
2 the claim -- this is now Limitation 1.9 and 1. -- 10, then
3 there is a receipt of an instruction from the network device.

4 And so in the parlance of '885, when I talk about the
5 messages, it's the indication limitations which are 1.6 and
6 1.7, and then that separate later instruction limitation that's
7 1.9 going into 1.10.

8 And those are messages. You know, they're -- the word
9 "message" isn't used. But they're -- you know, they're --
10 let's call them "communications" because they're specified as
11 coming from the network device, which would be the controller
12 in the parlance of the '885, to the players. Right?

13 And then in the '966 claim which we've heard a lot is the
14 other side of the coin, that claim likewise recites indications
15 being sent at the time of creation of the messages -- or excuse
16 me, of the zone scenes being sent to the players. And then it
17 has a limitation at the end that says that the controller then
18 causes the player to transition thereafter into that grouped
19 mode upon invocation.

20 So in both claims you see this split, right? There's the
21 creation, and the indications that are sent over the network to
22 achieve that creation, amongst other things that the claims
23 require. And then you have this second phase of invocation,
24 and you have limitations around that, including communications
25 that take place directly or indirectly between the controller

1 and the player.

2 And that framework, those claim limitations that walk
3 through step by step, you know, what is happening, you create a
4 first group and you send that indication -- to the zone scene,
5 you create a second zone scene, you send that indication.
6 There's something that kind of happens in between. It differs,
7 depending on the claim. '885 says you continue to operate in
8 standalone mode. '966 says you display those.

9 And then after that, then there is a selection of one of
10 the two that have been created, and saved. And then that
11 prompts an additional set of actions that then causes the
12 invocation, and the players to enter that group mode.

13 So all of those limitations, Dr. Schonfeld didn't map any
14 of these secondary references to any of that. At all. He
15 didn't even try. He relied on Sonos's 2005 system for all of
16 that. And he just left this little gap for himself where he
17 said: This is all I need from the secondary references. And
18 then he went and tried to pull those in. He tried to fill that
19 small gap which he, himself, characterized as just saving the
20 second group. That's all -- that's all he said was missing.
21 He went to all these secondary references and said: Well,
22 yeah, it would be known to save the second group.

23 But, all of that was premised on that the Sonos 2005
24 system had all that other stuff. And it just simply didn't.
25 And Dr. Almeroth --

1 **THE COURT:** Give me an example of what it did not
2 have.

3 **MR. SHEA:** Yeah. So, so this idea that you would
4 create a group, and have an indication sent to create a group
5 at a first point in time, but at a time when the group wasn't
6 invoked, and then at a later point in time in the claim would
7 you send an instruction to then invoke that group that has
8 previously been uninvoked, that separation of creation and
9 invocation and sending separate messages to achieve those two
10 purposes, Sonos's 2005 system did not have that, as
11 Dr. Almeroth testified.

12 What we've seen in the evidence -- and even Dr. Schonfeld
13 conceded this with Party Mode -- is that creation and
14 invocation happened at the same time. It was "anatomic"
15 action, is the word Dr. Almeroth used. But what -- it
16 occurred, both things happened at once. These groups were
17 automatically invoked at the time of creation. That's just how
18 they worked.

19 And so because of that, you don't see this separation in
20 these two different functions to achieve, one for creation, and
21 then one that you can achieve later for invocation.

22 And again --

23 **THE COURT:** Well, let me test you on that a minute.

24 In thinking about it, let's say you have a system with
25 just three speakers, or zone players. There's memory on each

1 one of the zone players that tells the zone player that it is a
2 participant in Party Mode. If and when it's invoked.

3 Now, that's the way I read your patent. Is that not true?
4 What you now seem to be saying is Party Mode is created and
5 invoked at the same time. But there has to be something on
6 those zone players that will catch the message that -- the
7 invocation and then string them together.

8 **MR. SHEA:** You're speaking of the prior art Party Mode
9 now, Your Honor?

10 **THE COURT:** I'm talking about on the Sonos 2005
11 system.

12 **MR. SHEA:** Yeah, yeah. So prior to the selection of
13 the Party Mode option, there's nothing on the players that
14 memorializes any existence of Party Mode. So what happens is
15 when Party Mode is selected -- and I think we had some
16 witnesses testify to this, but I'm pretty familiar with it,
17 Your Honor -- and so everything was at the controller. It was
18 hard-coded -- it was a hard-coded rule.

19 And when the user selected Party Mode, the controller
20 interpreted that as a selection to create a new dynamic group
21 with everybody that was currently in the system at the time.
22 And the controller then just cycled through and sent to -- to
23 each of the players an instruction that said: Create and invoke
24 this group now. And that's how it worked.

25 And the player, that instruction, it wasn't a broadcast;

1 it didn't blast it out. That's not how it worked. They were
2 directed messages to each of the members that were to be
3 included in that Party Mode. And it said -- and it told each
4 of them: You need to create and invoke this group right now.
5 And that's what the players did.

6 **THE COURT:** Before you -- on the 2005 prior art
7 system, before -- let's say you're listening to your system,
8 and you want to hit Party Mode, but you don't hit it yet.

9 And moments before you hit Party Mode button, doesn't the
10 controller know, have some information inside it, as to which
11 -- the identity of the speakers that are part of the system?

12 **MR. SHEA:** So Your Honor, I do believe that the
13 controller, for a separate purpose, does have knowledge of
14 which players are in the system prior to that. Because there
15 is some information just so that -- because setting aside all
16 of this, right, Party Mode, grouping, all of this, right, that
17 controller served to individually control each of the players
18 in the system. Right? So before these groups get formed, the
19 controller can control the volume on each of them, and can
20 control playback on each of them, individually. Right?

21 So, yes. The controller has awareness of the players in
22 the system. But in terms of when -- you know, that information
23 is -- is not -- it's not with the Party Mode. You know, the
24 Party Mode, again, it's not even a group. It's not -- it's
25 just -- it's a piece -- it's some code in the controller that

1 says: When the user selects this, here's a set of steps I want
2 you to take in order to create a new dynamic group that has
3 everybody in the system.

4 And that's how it worked. And so at that time -- but I
5 think what's important, Your Honor, is regardless of what the
6 controller did or didn't know, again, the claims require there
7 be two separate sets of -- two separate communications
8 happening at two different times. Right? For even a single --
9 before we even get the overlapping and the second zone scene in
10 play.

11 You've got to have an indication to the player telling it:
12 Hey, you've been added to a new zone scene, but it hasn't been
13 invoked yet. And then there needs to be a selection from
14 somewhere that, to invoke it. And then an affirmative action
15 by some actor -- I, mean the user in almost all cases,
16 Your Honor, right? That the user says: Okay, invoke it now.
17 I created it earlier. Invoke it now.

18 And then there's a separate second message sent. And the
19 claims require that. The claims require two separate
20 interactions, let me call them, with the -- between the player
21 and the controller at two separate times. And so that -- you
22 know, which is what facilitates all of this. That's what
23 facilitates the ability for users to achieve the real purpose
24 and goal of this invention, which is to allow users to
25 customize and pre-save groups so that they don't have to go and

1 create them every time.

2 And the key distinction why it's different than the Party
3 Mode in that system, I mean, the claim -- that's why the claim
4 has these separate communications. Because, Party Mode, you
5 didn't need -- it was predefined. Right? I mean, in a sense
6 that, like, Party Mode, you -- the rule in the code said "all
7 players." Right? User couldn't customize that. So there was
8 no need to communicate with the player. It's just a totally
9 different -- it's just a shortcut, really, on the controller.

10 And so that's why -- I mean, with zone scenes, there needs
11 to be a lot more work to be done. Because you need to allow
12 for creation of something that's -- that is customized by -- by
13 some actor entity -- again, the user in almost all cases,
14 regardless of whether the -- I mean, that word is in the claim
15 language or not. There has to be an affirmative creation. And
16 then a later invocation.

17 And Party Mode didn't allow that, Your Honor, in Sonos's
18 2005 system. It just simply did not meet all those other
19 limitations of the claims. And Dr. Schonfeld did not rely or
20 explain -- even try to explain how any of those other secondary
21 prior art references filled those gaps of having two separate
22 messages or -- or indications or instructions for, you know,
23 creating and invoking at two different times. It didn't have
24 -- you know, depending on the prior art references, missing
25 other things as well.

PROCEEDINGS

1 You know, naming of these -- these groups, that was
2 something that was missing in various places. I think Your
3 Honor already pointed that, out in some capacity.

4 There -- I could look through the claims and look at
5 others, Your Honor. But I think the important thing -- and
6 Dr. Almeroth talked through this. Because one of the things
7 that Dr. Almeroth told us is -- we started by saying okay,
8 well, he explained why Party Mode isn't a zone scene, zone
9 group isn't a zone scene. He started doing -- that was the
10 first portion of his testimony on that issue.

11 But then he was asked to assume, assume they are. Assume
12 that -- let's just call them zone scenes, let's use that word,
13 let's assume they meet the requirements of the construction for
14 zone scene. Even though he disagreed -- you know, he had told
15 us already he disagrees that's true. He then explained: Well,
16 even if you call them zone scenes, you still don't meet all
17 these other limitations of the claim. The key being this
18 separation between creation and invocation. You just don't
19 meet those other limitations of the claim.

20 And then --

21 **THE COURT:** That's what the examiner said? Or the
22 witness said?

23 **MR. SHEA:** At this point I'm talking about
24 Dr. Almeroth, Your Honor. Yeah, the expert witness, Sonos's
25 expert witness. And that's all in the transcript. And

1 Google's counsel didn't ask him about any of that, that he
2 testified. And even --

3 **THE COURT:** What did the examiner say about the Sonos
4 2005 system?

5 **MR. SHEA:** So, so Your Honor, the examiner did not
6 even raise the Sonos 2005 system as a reference he thought
7 presented a concern for these claims. He was -- had the
8 manual, he was provided with that. He reviewed it. He
9 acknowledged that it was considered by him as part of his
10 analysis of these claims.

11 But as far as I know, at least certainly in the '885 and
12 the '966 file histories, the examiner never even elevated that
13 to a reference that he rejected the claims upon.

14 And I think there's so much confusion on the DME
15 reference, Your Honor, and I'm happy to try to clarify because
16 I think I probably have a better understanding of what DME is
17 and isn't than what's coming through in this. I think there's
18 a lot of misleading statements being made about that. There's
19 a lot of clipping the file histories, and not looking at it in
20 the proper context.

21 First and foremost, the word "scene" in DME didn't even
22 refer to a group of players. It had nothing to do with groups
23 of players. So this -- it -- it stuns me that we're talking
24 about this, but anyway, so, the -- in DME there was a concept
25 of a group, separate from a scene. They were logically

1 separate concepts. You could group players. You couldn't
2 pre-save player -- groups and do the things that the zone scene
3 technology required. But you could create groups. You could
4 create. You couldn't overlap.

5 **THE COURT:** But you could save them, too. 999, right?

6 **MR. SHEA:** So that's the scenes, Your Honor. But this
7 is the key. A scene is not -- what you're saving has nothing
8 to do with a group of players. What a scene was in DME were
9 effects. Audio effects. Like, I'm going to have equalization
10 at this level, I'm going have volume at this level. I'm going
11 to do certain things, I'm going to manipulate the output of the
12 audio in certain ways. This is why there were 999 of them,
13 Your Honor. It had nothing to do with groups.

14 **THE COURT:** But did it allow you to group?

15 **MR. SHEA:** So, what -- not the scene. So what you did
16 was you would create a group, totally separate.

17 **THE COURT:** Like four or five speakers.

18 **MR. SHEA:** Four or five speakers, whatever you want.
19 You could only -- it was a dynamic group, just like in Sonos's
20 2005 system. A player could only ever be in one. You didn't
21 pre-create them, you didn't pre-save them. You just created a
22 group. Right? The concept of a group.

23 And then you could then -- what's called -- there's apply
24 a scene (indicating quotation marks). Okay, Your Honor. And
25 what that means is: Okay, I've got my group. I already have

1 that preexisting group. I mean, you could see it even in one
2 of the statements Mr. Pak showed us. This came through in that
3 statement, if you understand it. You have a group.

4 Now you can take a scene, which talks about how to
5 manipulate the audio output of the players or the audio in that
6 group. And you could apply that scene to that group. So you
7 could marry the two. You could --

8 **THE COURT:** Let's say you've got speakers 1 through 5
9 that are in a group.

10 **MR. SHEA:** Uh-huh.

11 **THE COURT:** And can that be saved for future use as a
12 pre-set?

13 **MR. SHEA:** That's not my understanding of DME,
14 Your Honor. And I don't think any of the -- regardless of
15 whether it's my understanding or not, I guess, none of the --

16 **THE COURT:** Well, but wait.

17 **MR. SHEA:** Yeah.

18 **THE COURT:** Well, that is different than what I was
19 picking up from Mr. Pak. I thought he was saying that if you
20 had a system, let's say, with ten speakers, you could connect
21 1, 2, 3, 4, and 5 as Group No. 1, and save it as a pre-set so
22 that next time you wouldn't have to dynamically do all -- just
23 the five; you would hit button No. 1 and then you would be
24 automatically playing -- now, you didn't have overlap, I get
25 that part.

PROCEEDINGS

1 Speakers 6, 7 could not be -- that would be on a
2 different -- and 1, 2, 3, 4 and 5 are already accounted for;
3 they couldn't be used in some other -- I get that. But I
4 thought he was saying it could be as a preset, and save for
5 future use. What you're adding to it is, okay, you get the
6 volume, you get the equalization; you could also save that too.

7 But are you sure about the pre-set thing, that it could
8 not be preset?

9 **MR. SHEA:** So Your Honor, I'm saying my
10 understanding -- and I don't think we have seen any evidence
11 that suggests to the contrary, I mean, maybe there is -- but
12 that a scene did not allow for that.

13 **THE COURT:** Well, did anything in Yamaha allow for
14 that?

15 **MR. SHEA:** Your Honor, not to my recollection. Which
16 is why, again -- it gets back to why you couldn't do overlap.
17 Right? The reason you couldn't do overlap in Yamaha was
18 because the groups -- the groups were automatically invoked in
19 DME. So that's why you couldn't have overlap of the groups.

20 **THE COURT:** What do you mean, automatically invoked?

21 **MR. SHEA:** So, so, not pre-saved for future use. When
22 it was created, it was active. And that's why, whenever you
23 have a system like that, where you -- the groups are invoked at
24 the time of creation, like, like Sonos's 2005 system, that's
25 when you can't have overlap.

1 **THE COURT:** You're saying that the -- that the dynamic
2 groups were -- I mean, you're saying that the Yamaha was all
3 dynamic groups, and no static groups? I could have sworn I saw
4 the examiner refer to "static."

5 **MR. SHEA:** I think that was in the context of Bose,
6 Your Honor, where you saw the word "static."

7 **THE COURT:** So you're saying Yamaha was dynamic, only.

8 **MR. SHEA:** That is my understanding. And just to take
9 a step back on Yamaha, I mean, a couple of other points,
10 Your Honor, may be worth noting.

11 I mean, first of all, Yamaha and Sonos 2005 wasn't even
12 one of the combinations that Dr. Schonfeld relied on. He's
13 relying on person of ordinary skill in the art --

14 **THE COURT:** Well, look, I don't have to -- the idea
15 that you have to have an expert testify to everything in the
16 universe --

17 **MR. SHEA:** Yeah.

18 **THE COURT:** -- is wrong. I can decide this, myself.
19 The Federal Circuit might reverse me. God bless them, that's
20 okay. But, just because I'm not locked into what an expert
21 says, I'm going to decide in my own mind.

22 And I keep thinking this. Back in the nineties, we had
23 speed dial. I could make all the groups I wanted with my
24 telephone. And that way, I could recall them instantly. And
25 that was years -- decades before this patent. To me, that was

1 third-grade -- third-grade technology, by the time your patent
2 came -- your invention came along.

3 So the idea of saving a pre-set group to me is -- is
4 obvious as these people on the Sonos forum.

5 Now, it's somewhat more complicated because of the
6 language of the claims. So I -- and the standalone, it's
7 complicated. More complicated. But maybe not that much more
8 complicated. So I'm trying to understand it, myself.

9 And, both sides, you keep throwing back what the experts
10 said and did not say. Yes, that's important. But it's -- it
11 could be that somebody wins or loses this case, based on
12 something that an expert did not say, but is in the evidence
13 anyway.

14 So I'm trying to understand the evidence.

15 **MR. SHEA:** And that --

16 **THE COURT:** I hate to get on your case about this.
17 But both of you are saying this.

18 Okay, I've given you equal time. I need to -- I'm going
19 to give the other side a very brief rebuttal. And then we're
20 going to reverse it, and let you make a main point.

21 All right, Mr. Pak, you get about two or three minutes and
22 that's it.

23 **MR. PAK:** Okay, Your Honor.

24 **THE COURT:** What do you say about the Yamaha
25 situation?

1 **MR. PAK:** We can just look right here. Let's pull up
2 Slide 10.19.

3 **THE COURT:** I don't see a thing.

4 **MR. PAK:** Sorry. DX10.19.

5 **THE COURT:** Not on my screen.

6 **MR. PAK:** I'll just -- do we have that?

7 (Document displayed)

8 **THE COURT:** Here we go. Now it is.

9 **MR. PAK:** (As read)

10 "...the prior art enables the selection of a
11 device or group for synchronized playback of
12 media..."

13 And it goes on to say that:

14 "...invocation of a scene which adds a
15 playback device or group thereof..."

16 This is USPTO examiner. Clearly, scenes were linked to
17 groups. And we can see it in the next slide as well.

18 (Document displayed)

19 **MR. PAK:** This is Sonos. The DME scenes can be
20 configured, stored, recalled within a given DME device group.

21 So these scenes were working in the context of saved
22 groups. The scenes could be used to add additional parameters.
23 But clearly, these were all pre-sets for groups.

24 **THE COURT:** Well, the phrase "save and recall,"
25 "create, save and recall various configurations" seems to me to

1 indicate that -- yes. But counsel will say: No, that's
2 referring to equalization and volume of sound, and not to --
3 not to groups of speakers.

4 **MR. PAK:** No, it's very clear. First of all, Yamaha
5 definitely disclosed having predefined and saved groups. Once
6 within that -- and I can -- I can show you the prosecution
7 history.

8 Do you have the prosecution history there as well? Yeah,
9 let's put that up.

10 So this is the preceding sentence before "Thus DME scenes
11 can be configured or stored or recalled within a DME."

12 (Document displayed)

13 **MR. PAK:** (Reading) So you have multiple zones in an
14 area that can be in a device group. No question that was
15 stored. However, individual pieces in DME cannot be assigned
16 to multiple device groups or overlapping device groups. A zone
17 can include up to 32 device groups, and all devices belong to
18 one of those groups.

19 So it's clear what the examiner was saying about DME. You
20 had predefined and saved groups within a group.

21 **THE COURT:** All right. But you still couldn't do
22 overlap.

23 **MR. PAK:** That's right. And that's where Bose comes
24 in. And that's where the Sonos forum postings come in. So we
25 have Sonos forum postings, Your Honor, that I went through

1 already on.

2 So this is just background of the art. The background of
3 the art already said you can store, recall, all kinds of
4 configurations involving multiple zone scenes. What they
5 argued was you couldn't have overlap. We saw Bose create an
6 overlap.

7 **THE COURT:** What do you say to the point that counsel
8 made that I believe I understood, and he said that when you hit
9 the Party Mode button on the 2005, it created and invoked at
10 the exact same moment. And therefore, it didn't satisfy the
11 two-step process of the claims.

12 **MR. PAK:** So there are two points I would say to that,
13 Your Honor. Number one, none of the claim language is about
14 user invocation at all. Or user action. This could be system
15 messages. And Your Honor hit it exactly right.

16 **THE COURT:** Let's even assume that.

17 **MR. PAK:** Yes.

18 **THE COURT:** It does say in the '885, for example,
19 after you have the indications for two different zone scenes,
20 then it says -- just a minute.

21 Here we go (As read):

22 "After receiving the first and second
23 indications, continuing to operate in the
24 standalone mode until a given one of the
25 first and second zone scenes has been

1 selected for invocation..."

2 And, then dropping down again:

3 "...based on the instruction transitioning
4 from operating in the standalone mode to
5 operating in accordance with the given one of
6 the first and second predefined groupings."

7 So that seems to be counsel is saying that there's --
8 there's got to be a few milliseconds of time in between.

9 **MR. PAK:** Yes, Your Honor. And we have evidence on
10 exactly that. So if we turn to slide 37 of my PowerPoint.

11 (Document displayed)

12 **MR. PAK:** So Dr. Schonfeld clearly explained this in
13 his testimony. This is at transcript Page 171, Line 9, to 174,
14 Line 2:

15 "Well, I disagree with Doctor..."

16 (Reporter clarification)

17 **MR. PAK:**

18 "Well, I disagree with Dr. Almeroth's
19 opinion; but even if I accept his opinion, it
20 is still not done exactly at the same time
21 because once you receive the set AVTransport
22 URI message, you still -- after that point,
23 you have to send an AddMember message, and
24 there is a whole sequence of exchanges that
25 take place before you are invoked to what

1 Dr. Almeroth calls invoke."

2 **THE COURT:** He's referring to the 2005?

3 **MR. PAK:** That's right. This is Sonos 2005 Party
4 Mode. And the claim does not say -- it simply says "after."

5 **THE COURT:** Now these messages are AVTransport -- what
6 is that, "URI message"?

7 **MR. PAK:** And then there's the subsequent AddMember
8 messages.

9 **THE COURT:** All right, those are -- those are what,
10 Java -- what language is that?

11 **MR. PAK:** I believe -- I don't know -- I think it's
12 probably implemented in a language other than Java. But these
13 are the computer messages that are sent back and forth between
14 the group members that belong to the Party Mode.

15 So, set -- you have the AVTransport URI message. Then
16 there's a second message, AddMember message. These are all
17 system messages that are found in the Sonos 2005 prior art
18 system source code which was not available to the patent
19 examiner.

20 And this is the key part. We went through this a lot with
21 all the witnesses. The claims don't specify any amount of time
22 that you have to wait before invocation, in the claims.

23 Furthermore, the specification says you can invoke it at
24 any time. That's at Column 2, Line 46 through 51 of the '885
25 patent. So if Your Honor has a copy of that, or I can have

1 that brought up.

2 **THE COURT:** Sorry, I --

3 **MR. PAK:** The '885 patent --

4 (Document displayed)

5 **THE COURT:** Well --

6 **THE CLERK:** Here, Judge.

7 **MR. PAK:** Thank you, Your Honor.

8 **THE COURT:** What column?

9 **MR. PAK:** Column 2, Line 46 through 51.

10 (Document displayed)

11 **MR. PAK:** If you go to Column 2, Line 46?

12 (Document displayed)

13 **THE COURT:** 2 --

14 **MR. PAK:** To Line 46 through --

15 **THE COURT:** 46. All right.

16 **MR. PAK:** Through 51.

17 (Document displayed)

18 **THE COURT:** All right.

19 "According to another aspect of the present
20 invention..."

21 **MR. PAK:** ...a user may activate the scene.

22 at any time..."

23 **THE COURT:** Does not say that. Let me read it:

24 "According to another aspect of the present
25 invention, the scene may be activated at any

1 time or a specific time."

2 **MR. PAK:** Correct.

3 **THE COURT:** (As read)

4 "A user may activate the scene at any time so
5 that only some selected zones in an
6 entertainment system facilitate a playback of
7 an audio source. When the scene is activated
8 at a specific time, the scene may be used as
9 an alarm or buzzer."

10 All right. So what's the key language here?

11 **MR. PAK:** The key language, Your Honor, is the patent
12 specification talks about "activation" to mean "invocation."
13 The patent says that invocation can happen at any time after
14 creation. It does not require any amount of time --

15 **THE COURT:** So let's say, for the sake of argument,
16 you're right. And on the 2005 you hit the Party Mode button.

17 **MR. PAK:** Yes, Your Honor.

18 **THE COURT:** All right. Walk through the steps of why
19 that would fit, or how -- how -- to what extent it would fit
20 the claim language of the '885.

21 **MR. PAK:** So let's bring up slide 3 from the deck.

22 (Document displayed)

23 **MR. PAK:** This was all uncontested evidence that came
24 in. And it was confirmed by Mr. Millington --

25 **THE COURT:** Don't say all these argumentative things.

1 I know the other side would deny that.

2 **MR. PAK:** So, so --

3 **THE COURT:** Just tell me what he said.

4 **MR. PAK:** So this is the Party Mode, what happens in
5 the Party Mode system or with Party Mode for all zones is this.

6 Remember, the controller has both the code, and it also
7 has all of the knowledge of what zone players exist in the
8 system, stored in memory. And I think counsel recognized that.
9 Because it has to know where to send these set AVTransport URI
10 messages. Those are messages that are sent by the system. The
11 claims do not require user messages.

12 These messages are sent to these zone players, at a given
13 point in time. Then these zone players 106 and 104 then also
14 transmit additional messages to the group coordinator of that
15 zone player, including the AddMember message. And so what we
16 are having is a series of messages that are operated in
17 sequence after the user pushes the Party Mode button.

18 It causes, number one, a delay in time, as Dr. Schonfeld
19 talked about, between the time that they are created to the
20 time that there is invocation. And --

21 **THE COURT:** All right. I -- I think I understand.
22 What the -- the term "set AVTransport URI," what is our
23 testimony as to what that actually consisted of?

24 **MR. PAK:** That consisted of -- we have multiple
25 testimony on that, Your Honor. That's Mr. Millington, as well

1 as Dr. Schonfeld. So let's take a look at that.

2 **THE COURT:** No, no, we don't have time --

3 **MR. PAK:** Yeah. I think we cited it, Your Honor.

4 But, it's Mr. Millington's testimony about the set AVTransport
5 URI --

6 **THE COURT:** What did he say?

7 **MR. PAK:** He said that -- just -- that Party Mode uses
8 set AVTransport URI messages that are sent from the controller
9 to the zone players. He also testified --

10 **THE COURT:** What did they do for a living? What do
11 those messages do?

12 **MR. PAK:** They basically cause the zone players to
13 start communicating. So every zone player, other than the
14 group coordinator, would receive that message from the
15 controller. They then communicate with the group -- the group
16 coordinator, which is 102, using other messages, including the
17 AddMember message.

18 And so it fires off a sequence of operations among the
19 zone players to basically create and then invoke the zone
20 scenes. And so that -- or the Party Mode, as one zone scene.
21 So that's all in evidence at this point, Your Honor, from both
22 Mr. Millington and --

23 **THE COURT:** All right. I've given you a -- I'll give
24 you a chance to respond to that, and then we've got to move on.

25 **MR. SHEA:** Yeah. Your Honor, this is not a matter of

1 time. I mean, the claim lays out a sequence of three key
2 actions here. There's more in the claim, but there's a
3 sequence of three key actions. First you create it. Then it's
4 selected, second. That's the middle part of the claim. And
5 then it's invoked.

6 So it's not a matter of how long. You've got to have it
7 created first, and then make it available to select it after
8 it's created. And then it's invoked, based on that selection
9 of the thing.

10 Party Mode did not meet that. It doesn't matter how much
11 time it took for these messages. You selected it first --

12 **THE COURT:** But the selection could be by the system.
13 Doesn't have to be by a user.

14 **MR. PAK:** (Nods head)

15 **MR. SHEA:** That's right, Your Honor. I think for
16 purposes of what I'm saying, it just doesn't matter. Party
17 Mode is selected first. And then creation and invocation
18 happen immediately after that. And they happen -- Dr. Almeroth
19 believes they happen "atomically," meaning at the same time.
20 If there's some minimalist time in between, it just doesn't
21 matter. Because what the key is is they were created first,
22 then allowed selection -- allowed for selection, and then
23 invoked after the selection.

24 That's what the claim requires. And that's what Party
25 Mode did not meet. Amongst other things, Your Honor.

1 **THE COURT:** All right. We've got to switch to -- I'm
2 going to give your side -- I have a medical appointment that I
3 need to make later in the early afternoon. So I've got at
4 least 30 more minutes, but that's about it.

5 So I want to give Sonos a chance to make your -- a main
6 point. Could be anything in your paperwork that you want to
7 make sure that I have -- be thinking about.

8 **MR. SHEA:** Thank you, Your Honor.

9 You know, I mean, I think we believe it's pretty clear on
10 the briefs. I mean, we don't necessarily feel we need to
11 burden Your Honor with more argument today.

12 **THE COURT:** Good, then let's just go home. But -- no,
13 come on.

14 **MR. SHEA:** Okay.

15 **THE COURT:** There must be something you would like to
16 emphasize.

17 **MR. SHEA:** Yeah. Yeah. Yeah. So Your Honor, I
18 really think -- I just don't believe there really is any
19 further dispute that the prior versions of Google's products
20 meet the limitations of the '966 patent.

21 As Your Honor likely recalls, the -- the prior versions of
22 the products have already been found on summary judgment to
23 satisfy the limitations of the '885 claims. We've heard
24 throughout this entire trial that they're two sides of the same
25 coin, they're very similar limitations --

1 **THE COURT:** But they're not identical.

2 **MR. SHEA:** They're not identical.

3 **THE COURT:** There are differences.

4 **MR. SHEA:** So the one remaining limitation, I think,
5 or the other limitation that Google has disputed is this notion
6 that the controllers do not cause storage of -- of the zone
7 scenes. Right, that's the only dispute remaining on the prior
8 version of the products for infringement purposes, Your Honor.

9 And I think the evidence we've laid out in our motion, the
10 evidence Your Honor heard throughout the trial shows that
11 absolutely those speaker groups are stored.

12 Let me just start here, Your Honor. They have to be
13 stored. Otherwise, it would be impossible to recall them
14 later.

15 **THE COURT:** Well, see, this is the kind of the same
16 flip side of the argument we were just having a while ago about
17 the two steps. And you say it's all one step and the -- okay.

18 All right. Let's -- okay. Let's find out what the answer
19 is. Mr. Pak, what is your answer to this point that counsel is
20 making? Then I'm going to give him a chance to shoot down what
21 you say.

22 **MR. PAK:** Thank you, Your Honor. So if we go to the
23 presentation, my presentation at Page 55.

24 (Document displayed)

25 **MR. PAK:** Actually, in the other deck. This is for

1 the causing storage.

2 Let me start by saying, Your Honor, that "causing storage
3 of the first zone scene" language appears only in the '966
4 claims.

5 (Document taken off display)

6 **THE COURT:** Yes, that's right.

7 **MR. PAK:** It's separate from creation. And what's
8 being caused to be stored is, quote, "zone scenes." So you
9 have to have the first zone scene that is stored and a second
10 zone scene that is stored.

11 (Document displayed)

12 **MR. PAK:** So we have it on the PowerPoint now.

13 **THE COURT:** And there's also the icon, the '855
14 doesn't -- '885 doesn't have any icon. They're displaying a
15 representation.

16 **MR. PAK:** That's right, Your Honor.

17 **THE COURT:** All right.

18 **MR. PAK:** So if you go to two slides before that.

19 (Document displayed)

20 **MR. PAK:** This is the key point that we have been
21 saying all along in trial. "Zone scene" is not just anything.
22 It's "A previously-saved grouping" and you are saving it
23 according to the language of the claims for later invocation.
24 That time could be any amount of time. But you have to save
25 the grouping for invocation purposes.

1 "Grouping" is not just a name or an ID. It is the
2 identity of the members of the group. And that's plain from
3 the language of the claims, claim construction, Dr. Almeroth's
4 testimony, as well as Dr. Schonfeld.

5 If you go to Slide 56.

6 (Document displayed)

7 **MR. PAK:** We went through this, Your Honor. We had
8 Mr. Mackay talk about his technology, the ACA technology, where
9 there's no need to store the actual grouping or membership
10 information of the speakers because you're only pulling the
11 information at the time that you need it. And this was all the
12 testimony that came in. He provided, at length, descriptions
13 of his technology.

14 **THE COURT:** Well, it must be stored somewhere. The
15 identity of the membership has to be stored somewhere.

16 **MR. PAK:** It's not stored -- no, Your Honor. It's
17 only -- it's not stored. Because, if Your Honor recalled, you
18 were asking I think both witnesses, Mr. Mackay as well as
19 Dr. Schonfeld, there's a broadcasting going on.

20 So what happens is each speaker in the Google system is
21 continuously broadcasting out, "I'm a member of this group, I'm
22 a member of this group." When the controller needs the
23 membership information for invocation of that group, they are
24 listening -- the controller's is listening to those broadcasts.

25 If a speaker drops out of the system unbeknownst to the

1 controller, it won't know that it dropped out. All it will
2 know is that at that point in time, I got messages back; I'm
3 looking for all the members that belong to Group 1. It heard
4 from two speakers. Two speakers said "I'm here and I belong to
5 Group 1." Then it uses that information to identify the leader
6 for a group playback.

7 And the key thing --

8 **THE COURT:** Let's say that's exactly the way it
9 worked. Why isn't -- each of the speakers understands that
10 it's a member of that particular group.

11 **MR. PAK:** Right.

12 **THE COURT:** So that info has to be stored somewhere on
13 the speaker.

14 **MR. PAK:** The group information, the group ID
15 information, absolutely, it's stored.

16 **THE COURT:** Why isn't that enough to satisfy "causing
17 storage of the first zone scene"? It's -- it's subdivided
18 between speakers, but it's stored somewhere.

19 **MR. PAK:** Because the other part of that construction,
20 Your Honor, is the previously-saved. So what you are trying to
21 do is at the time you create the group, let's say where there
22 were three speakers at the time you created the group, what
23 you're supposed to do, according to the claim language, is save
24 the list of three that is previously saved, pre-defined
25 grouping, according to the claims.

1 When you invoke the group, you're supposed to go back to
2 the list of three speakers. Because that's what you previously
3 saved, that was previously defined.

4 **THE COURT:** Well, wait a second. Did I define that
5 somewhere as the -- that had to be in a list stored somewhere
6 as a list?

7 **MR. PAK:** You didn't define that, Your Honor. But
8 it's in the -- I'm using the construction which is in the
9 previously-saved grouping of zone players according to a common
10 theme.

11 Both Dr. Schonfeld and Dr. Almeroth agree that that's
12 membership information. You have to store information about --

13 **THE COURT:** But you're making it sound like it has to
14 be in a single file as a list, as opposed to stored on three
15 different speakers as -- as a -- just a piece of it, that
16 Speaker A is a member of Group 1 and Speaker B is a member of
17 Group 1. Could be members of others, but it's broadcasting out
18 "I am a member of Group 1, I am a member of Group 1."

19 **MR. PAK:** Right.

20 **THE COURT:** So, but that information in the aggregate,
21 though it is segregated between multiple speakers, it is
22 stored, isn't it? Previously stored? Because it's on the
23 speakers?

24 **MR. PAK:** The ID is stored. But here's the key
25 distinction between the Google system and the claims. The

1 claims say if I have three speakers, no matter how you
2 distribute the storage, that's previously saved, previously
3 defined at the time of creation. Then when you invoke that
4 zone scene, you're supposed to use the three that you have
5 identified. Because those are the ones that were identified --

6 **THE COURT:** All right.

7 **MR. PAK:** Google's products, and all the products, all
8 work totally differently. Because at the time I created the
9 group or a zone scene, accused zone scene, I may have three
10 speakers.

11 **THE COURT:** You have what?

12 **MR. PAK:** Three speakers, we'll say.

13 **THE COURT:** All right.

14 **MR. PAK:** At a later point in time when I'm trying to
15 use the group or invoke the group, I may only have two.
16 Because in our system, in the Google system, I never go back in
17 time to when the group was created. We never store anything
18 about that historical point in time.

19 What we're doing is at the time that you need it, you
20 listen to the broadcast. So in the scenario where I described
21 that one of the speakers fell out, Your Honor, out of the
22 three, one fell out of the network or the wifi strength is not
23 very good for that speaker, the new group identity will be two
24 speakers, not three.

25 So this is what Mr. Mackay described as a different

1 solution, in his historical document. He considered an option
2 like the one independently, like the one that is claimed where
3 you store the information about the group members, and use that
4 previously-stored information for later use.

5 **THE COURT:** But let's say there hasn't -- you're
6 assuming that an asteroid has fallen out of outer space, and
7 hit your house and knocked out a speaker. Let's assume it's
8 just a routine thing, and you've got three speakers, and they
9 continue to work.

10 **MR. PAK:** Yes.

11 **THE COURT:** Why isn't that, then -- analyze that
12 situation.

13 **MR. PAK:** Sure

14 **THE COURT:** You've got the information that's all
15 stored; you can invoke them.

16 **MR. PAK:** No, because according to the system, it
17 never knows what was saved. It doesn't store any information
18 in the system about the three speakers. Only you and I
19 remember that when I created the group, that it was three
20 speakers. The system doesn't --

21 **THE COURT:** You keep making it sound like it has to be
22 stored in one file, and dividing up the information -- what was
23 it called, "distributed storage," that was the phrase.

24 **MR. SHEA:** (Nods head)

25 **THE COURT:** The distributed storage is not a

1 legitimate alternative.

2 **MR. PAK:** It's not just -- the issue is this,
3 Your Honor. If you plug in Your Honor's construction into the
4 claim language, it says that you have a pre-defined group.
5 It's previously saved grouping, academic to the zone scene
6 language. And if you read the rest of the claim language, it
7 says you invoke the group playback based on what you previously
8 saved, which is the list of speakers, or the grouping.

9 What we're saying, Your Honor, is the system has no prior
10 knowledge of what speakers may have belonged to any given group
11 or not. Even in the world in which the same speakers still are
12 broadcasting the information that it belongs to a group, the
13 system doesn't know that. It doesn't store that information.
14 Only you and I know that, because we happen to use our brain to
15 recall what the setting was.

16 **THE COURT:** No, but the speakers are broadcasting that
17 information. They must have gotten it from somewhere, and
18 stored it somewhere, for rebroadcast later.

19 **MR. PAK:** It stores their individual group ID. But
20 the uncontested evidence -- well, I won't say "uncontested."
21 What Mr. Mackay said is -- and it's confirmed by
22 Dr. Schonfeld -- is: If I just know the ID and the group name
23 for a given speaker, I still don't get to the list of actual
24 speakers for that group. Because the group composition can
25 change second by second. So in the Google -- in the Google

1 design, I'm never going back to a previously-saved grouping.
2 I'm pulling the grouping dynamically.

3 So Your Honor is absolutely right that there is device --
4 every device in the system stores the group ID it belongs to.
5 But nowhere in the system does it say that morning group, for
6 example, has three speakers, and these three speakers are to be
7 used for invocation of that group. It doesn't work like that.

8 **THE COURT:** All right. Let's --

9 **MR. SHEA:** So Your Honor, you actually --

10 **THE COURT:** You get to respond.

11 **MR. SHEA:** Thank you, Your Honor.

12 You don't even need to take my word for it. So I'm just
13 going to read from a couple of the dep designations that were
14 played in court from Google's witnesses.

15 Let me start with Mr. Mackay. I took his deposition. So
16 I asked him -- a little preface Your Honor, if you recall --

17 **THE COURT:** These were read to the jury, now?

18 **MR. SHEA:** Yeah. These were played by video to the
19 jury.

20 **THE COURT:** Okay.

21 **MR. SHEA:** And just as a little bit of, like,
22 refresher context, in a speaker group there's one device called
23 the "leader," he's the coordinator, he's in charge. And the
24 rest of them are called "followers."

25 Okay, so with that context I asked him --

1 **THE COURT:** Always say "Question" and read it.

2 **MR. SHEA:** Yeah.

3 **THE COURT:** And then say "Answer" --

4 **MR. SHEA:** Sure, yeah.

5 **THE COURT:** For the court reporter.

6 **MR. SHEA:** (As read)

7 **"QUESTION:** Focusing specifically on
8 whichever player is currently elected as the
9 leader of a particular group, will that
10 player store in memory identifiers of each
11 device that is currently a follower of that
12 group?

13 **"ANSWER:** It stores information about the
14 followers that are currently connected to
15 it."

16 So Your Honor this is Mr. Mackay, not, not with this newer
17 theory --

18 **THE COURT:** Read that last sentence again.

19 **MR. SHEA:** Sure. He said -- do you want me to read
20 the whole thing, Your Honor?

21 **THE COURT:** Just the answer part.

22 **MR. SHEA:** The answer said:

23 "It stores information about the followers
24 that are currently connected to it."

25 Your Honor. So first of all, the leader of the group

1 stores identifying information -- "Identifiers" was the word I
2 used in my question -- of the followers in the group. So the
3 leader certainly knows.

4 And it makes sense, Your Honor. The leader has to know
5 who the followers in the group are. He has to.

6 **THE COURT:** Why is that?

7 **MR. PAK:** Because when the group is invoked, when it's
8 launched, the leader then needs to talk to the followers so
9 they can coordinate for synchronous playback.

10 If the leader doesn't know who the followers are, he
11 doesn't know who to direct those messages to. He doesn't --
12 the invocation message doesn't tell the leader: Hey, these are
13 the other members of the group. That's not how it works.
14 There's just a launch message. It goes to the leader. It
15 says: This is the group ID; I want you to invoke it now.
16 Invoke that group.

17 And the leader says: Okay, good.

18 **THE COURT:** Well, you could -- I want to quarrel with
19 you a little bit.

20 You could have a system where the leader sends out a
21 broadcast to the entire universe, and it has a header that
22 says: Listen to this message only if you are a member of this
23 group. So it wouldn't necessarily have to --

24 **MR. SHEA:** Okay.

25 **THE COURT:** It could be to everyone, but only -- it

1 would only be paid attention to by the members of the group.
2 So I'm not sure you're right that it has to know.

3 **MR. SHEA:** Yeah -- sorry, Your Honor.

4 **THE COURT:** But, but, maybe, I remember, you are
5 making me remember some testimony about they're constantly
6 deciding who is the leader of the group, based on wifi
7 strength. So in that sense, it does seem to me the leader
8 would need to know who was in the group.

9 **MR. SHEA:** And I apologize for suggesting that's not
10 the only way to do it. But that is the way Google does it,
11 Your Honor. I mean, that's how their system works. They don't
12 send a broadcast message. The leader communicates individually
13 with those followers --

14 **THE COURT:** But is there testimony? Or is that just
15 you talking?

16 **MR. SHEA:** I believe there's testimony from -- in the
17 record on that. Or documents, source code. But that is how
18 the system works, Your Honor.

19 And then, the other testimony -- and I should say that the
20 deposition designations that were played in court are lodged at
21 Docket 755-2. Just for the record, I want to put that --

22 **THE COURT:** Good. Thank you for doing that.

23 **MR. SHEA:** So that's one piece of testimony,
24 Your Honor. And I could grab others from Mr. Mackay on that,
25 from his deposition designations.

1 But I want to also -- there was another conversation I had
2 which I think gets to Your Honor's other point, which is the
3 deposition designation of Mr. Pedro. Mr. Pedro was another
4 witness who testified live. He was also a 30(b)(6) witness.

5 And so I had a back-and-forth with him. It's a little --
6 um, there's a couple questions back and forth. To provide
7 context for the ultimate answer, would it be okay for me to
8 read them? Or do you want me to kind of just go to the
9 punchline, Your Honor?

10 **THE COURT:** Go to the punchline.

11 **MR. SHEA:** Sure. So after some back and forth, what I
12 asked him is -- he had previously stated that there is a
13 collection of records that has information about speakers.

14 So I said (As read):

15 "Well, focusing on that collection of
16 records, is it fair to say that that
17 collection of records stores collectively the
18 speaker group for later recollection?"

19 And his answer was:

20 "I would say yes."

21 So Your Honor, this is now Google's other witness who they
22 brought up and who is the Goggle home designee testifying that:
23 Yes, after a group is created, there is a collection of records
24 that collectively stores the speaker group for later
25 recollection.

1 That testimony, Mr. Mackay's testimony I read --
2 Mr. Mackay also separately testified and Your Honor's seen this
3 multiple times that speaker groups are saved persistently
4 (Indicating quotation marks) in Google's system -- all of that
5 testimony overwhelmingly establishes that "causing storage of
6 the first zone scene" -- which is the claim language -- is
7 satisfied here. There just isn't any way to reach a different
8 conclusion, in our view, Your Honor.

9 **THE COURT:** All right. I'm going to bring up -- well
10 all right, I'll give you one minute to respond to that, and
11 then I have time to bring up something on my own.

12 **MR. PAK:** Thank you, Your Honor. So quickly, at slide
13 55, what we heard from Mr. Mackay was talking about currently,
14 at a current point in time, whether the leader has information
15 about the followers. But the claim language is talking about
16 causing storage of the first zone scene at the time of creation
17 of the zone scene.

18 (Document displayed)

19 **MR. PAK:** And then it goes on to say that you have to
20 then invoke the group in accordance with the first defined
21 grouping.

22 So none of that testimony contradicts the underlying
23 operation in the Google products. Google products never go
24 back to the time of creation to look at the list of members of
25 a zone group, to say: Hey, this is the list of speakers that we

1 should be using for invocation. We don't do that. That's why
2 I said "currently."

3 The last thing I'll say Your Honor, on Pedro is on
4 slide 59.

5 **THE COURT:** Look. Here, wait a minute.

6 **MR. PAK:** Yeah.

7 **THE COURT:** See, here you say "no causing storage of
8 zone scene for later" -- and you underline the word "later" --
9 "invocation."

10 **MR. PAK:** That's right.

11 **THE COURT:** So that's what you say when we're talking
12 about infringement. But when we talk about validity, you're
13 taking the opposite view, and saying it can be almost into
14 milliseconds, is enough.

15 **MR. PAK:** No, Your Honor. So what we're saying is
16 under their view --

17 **THE COURT:** Under their view, okay.

18 **MR. PAK:** Under their view, which is their burden to
19 meet for infringement, under their view, first of all, there is
20 no separation in time because -- and also, not only that,
21 Your Honor, the creation of the group already happened long
22 before this point in time.

23 So if you remember in the ACA technology, the group
24 coordination occurs continuously. And it's happened ever since
25 the user corrected the group. So there's no question in the

1 Google products, even under their view or our view, that
2 creation happened long before you get to the step of trying to
3 use the actual group for invocation.

4 In that moment, when you're using it for invocation,
5 Mr. Mackay testified consistently during his deposition and
6 during trial that you're only using the current membership
7 information. Not something that was previously stored.

8 Number two, Your Honor, on Pedro, quickly. This is 1459.

9 (Document displayed)

10 **MR. PAK:** All the testimony we heard from Mr. Pedro
11 was talking about the collections of records on the controller
12 for user interface display.

13 But he specifically testified during trial, and not
14 contested, that the membership information in the cache on the
15 controller is never used for playback purposes. It's only to
16 speed up the display. But it is not being used to play music
17 as a group.

18 That, when it goes into that mode of trying to invoke a
19 group, it's only listening to the broadcast messages, which at
20 that moment in time will tell you which members are available
21 and who is the leader.

22 So on that point, I would disagree with Mr. Shea that the
23 leadership election process is continuous. This happened over
24 time.

25 **THE COURT:** Okay. I have a question.

1 **MR. PAK:** Yes.

2 **THE COURT:** And this concerns the specification.

3 Let's say that a -- a simple three-zone player group --
4 system. And you have -- the first two are in one group, and
5 then let's say No. 1 and 3 are in a different group. So 1 and
6 2 is Group A, and 1 and 3 is Group B. And those are -- those
7 are -- this is according to the way it would work in the
8 specification.

9 When you invoke -- let's say you've got -- Group A is
10 playing. You know, two different speakers, in tandem and in
11 synchrony. And then you've got the third speaker playing
12 something else. And then you hit the button, and it says to
13 invoke Group B.

14 Does -- but since Group A has already been invoked, what
15 does Group 1 -- sorry, does -- not Group 1 -- does Speaker 1
16 switch and go to the second?

17 **MR. SHEA:** Yeah.

18 **THE COURT:** Now, your specification doesn't say. I
19 looked. I couldn't find anywhere where your specification
20 tells us what the answer is. So I know that's what -- I
21 anticipated you would say: Oh, yes --

22 **MR. SHEA:** Well --

23 **THE COURT:** Or does it play both? It could be wired
24 to play both. It would be confusion. Or, does it stick with
25 the original invoke? So you've got kids playing rock and roll,

1 and you've got mom and dad listening to the news, and they got
2 a war going on. Each one of them's hitting the button.

3 How -- in my view, the specification gives us no guidance
4 on this. But I'm going to give you a chance to tell me where
5 it does address this problem.

6 **MR. SHEA:** Yeah, Your Honor. Thank you. And I'm
7 just -- sorry, I was pulling up the spec. I believe I know
8 where -- sorry.

9 **THE COURT:** Where is that? Where would it be in this
10 thing?

11 **MR. SHEA:** One second, Your Honor. Just give me a
12 second to look, if you don't mind? Because I don't want to
13 misstate something.

14 **THE COURT:** Sure.

15 **MR. SHEA:** So if you go to Column 9, Your Honor.

16 **THE COURT:** All right. Let's go there. Column 9.

17 **MR. SHEA:** So, and you can see -- I think we can start
18 on Line 1, actually, Your Honor.

19 **THE COURT:** Okay.

20 **MR. SHEA:** So what this is describing is what's called
21 an evening scene. This is a little bit -- the evening scene
22 here actually is a scene that would define two -- pre-define
23 two separate groups. But I think the key thing, Your Honor, is
24 if you look at -- it starts right after the listing of players.

25 And you see the language where it says (As read):

1 "...where bathroom, family room and foyer
2 should be separated from any group if they
3 were part of a group before the zone scene
4 was invoked."

5 So I think, Your Honor, this is the piece of the
6 specification -- at least one piece, and there could be others,
7 but this is the one I remember off the top of my head -- where
8 this is the specification telling you that when the zone scene
9 is invoked, any players that were part of a group before that
10 gets separated apart from that group so that they get -- and
11 then they be -- that group is the one that becomes activated.

12 **THE COURT:** Well, the odd thing about it is, that
13 phrase says "where bathroom, family room and foyer," they're
14 not even referenced in the list above.

15 The whole paragraph reads:

16 "In one embodiment as shown in Figure 3B..."

17 So maybe we've got to look at 3B and that's where it will
18 explain that.

19 **MR. SHEA:** Yeah, um --

20 **THE COURT:** Okay, so all right, so we see --

21 (The Court examines document)

22 **THE COURT:** I'll have to study it because I don't see
23 immediately what your point is. But the next paragraph -- all
24 right, I'll go back and look at that passage.

25 **MR. SHEA:** Yeah.

1 **THE COURT:** Another paragraph says:

2 "One important" -- it's Line 16.

3 "One important of the features..."

4 **MR. SHEA:** Yeah, I think there's just maybe a typo
5 there, Your Honor.

6 **THE COURT:** Uhm. Wait a minute. Let me -- well, read
7 it as is (As read):

8 "One important of the features benefits
9 enough objects in the present invention is
10 that zones do not need to be separated before
11 a zone scene is invoked. In one embodiment a
12 command is provided and links all zones in
13 one step, if invoked."

14 **MR. SHEA:** Yeah, that's right, Your Honor.

15 **THE COURT:** Is that Party Mode? Is that what they are
16 talking about?

17 **MR. SHEA:** Yeah. That would be a user-created Party
18 Mode, Your Honor. If you were to -- if a user were to create a
19 zone scene that had all the zones then that would be one
20 example of a zone scene here.

21 But I do think, at least, Your Honor, I've always read
22 that -- that -- that language, and I thank you for pointing it
23 out because I had forgotten it was there, about "do not need to
24 be separated" in the context of the prior passage. And again,
25 I've always understood that language to mean when you invoke a

1 zone scene, one of the things that's going to happen is if
2 there's a previously-invoked group, it's going to separate that
3 for you automatically as part of invoking the zone scene.

4 And that's where my understanding comes from, Your Honor,
5 to answer Your Honor's question on that.

6 **THE COURT:** Well, a different way to read that is that
7 you have -- if "bathroom, family room and foyer" were part of
8 one of these two groups that are listed here, then you would
9 have to go and manually separate them before you invoke the
10 zone scene. That's another way to read that.

11 Okay, I've got to study it some.

12 **MR. SHEA:** Okay.

13 **THE COURT:** Here's my -- my last thing. I'm going to
14 ask each of you to -- I'm sorry?

15 (Off-the-Record discussion)

16 **THE COURT:** I'm going to ask each of you to submit a
17 proposal or comments on -- I -- I continue to be concerned
18 about the issue of written description. And the fact that that
19 sentence was added and got by me -- no one bothered to tell me
20 at the time, last, a year ago. That sentence was newly added
21 that I expressly relied on. And you had told me that it was in
22 there, and we relied on your brief. And it turns out that that
23 very sentence which you didn't tell me had been added way after
24 the fact. And I'm troubled by that, still troubled.

25 So I know I issued a ruling, but I also feel I was not --

1 I got a half a deck of cards. And I was not told the complete
2 truth.

3 So I want each of you to submit a proposal or comments on
4 how the Court should go about addressing that problem. And
5 including whether or not it's open to the Court to reevaluate
6 that issue completely, as if it was on summary judgment or on
7 this trial record or Rule 50. I don't know the procedural --
8 but I'm troubled by that.

9 You don't need to respond now, but I would like you to
10 respond in writing. So, and then I want each of you to comment
11 on each other's comment. I don't think you need more than ten
12 pages to do this.

13 So, ten pages. What is today?

14 **MR. SHEA:** It's Wednesday.

15 **THE COURT:** Wednesday, all right. So let's say due
16 next Monday, and then the following Wednesday -- at noon and
17 then the following Wednesday at noon, each side gives -- no,
18 Monday is a holiday, isn't it?

19 **THE COURTROOM DEPUTY:** Yes.

20 **THE COURT:** You probably don't want to wreck your
21 holiday. All right, Tuesday at noon.

22 **MR. SHEA:** Thank Your Honor.

23 **THE COURT:** And then each side respond on Wednesday at
24 noon. And, with five pages. No attachments, no nothing, just
25 ten pages, five pages. And, that's -- I'm not making a ruling

1 on whether we are going to get back into it.

2 Now, I also want to say one thing about Google here. I've
3 said it before. I have been surprised that you didn't point
4 these things out to me earlier. Which leads me to believe that
5 somewhere in this vast armada, that you had a strategic reason
6 -- that you knew about it. Maybe not you, Mr. Pak, but your
7 team knew about it, and you withheld it from me because you
8 felt it would hurt you on some other PTAB proceeding where
9 you're on the exact opposite side of that issue. Probably even
10 with Sonos. And so you didn't want to prejudice your -- your
11 position in some other case.

12 It would not be fair to Sonos for you to hold back on that
13 point, and then only when the judge brings it up that you say:
14 Oh, Judge, you're right, oh, look -- no. I want to -- I'd like
15 to know when your side, anyone on your side, knew about that --
16 that issue, in any form or fashion. So you can include that in
17 your ten things.

18 And then if the answer is: Oh, we just didn't know, how
19 could it be that a team this big did not go back and read the
20 prosecution history? You need to explain that to me.

21 **MR. PAK:** Will do, Your Honor.

22 **THE COURT:** All right. I have to go see a doctor.
23 I'm sorry; I'm going to take off. All right? And, I look
24 forward to seeing you again. On Friday, right?

25 **MR. PAK:** Yes, Your Honor. Would you like the slides

1 that we used?

2 **THE COURT:** Give it to the law clerk. And the other
3 side, you didn't have any slides, but you can give them
4 equivalent slides.

5 **THE COURTROOM DEPUTY:** Court is adjourned.

6 (Proceedings concluded)
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CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Sunday, May 28, 2023